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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,790	03/16/2004	Yung Chu Cheng	USP2329T-MHC	9208
7590	02/08/2005		EXAMINER	
Raymond Y. Chan Suite 128 108 N. Ynez Ave. Monterey Park, CA 91754			PATEL, NIHIL B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/800,790	CHENG, YUNG CHU
	Examiner	Art Unit
	Nihir Patel	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on March 16<sup>th</sup>, 2004.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) 11 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Flynn US Patent No. 6,543,450. Referring to claim 1, Flynn discloses a survival mask that comprises an eye protection film 2 on a mask body 3 periphery of the mask body (see figures 1); and an adhesive band 9 having a user adhesion side provided on a film periphery of the eye protection film (see column 6 lines 66, 67 and column 7 lines 1-10), wherein when the mask structure is in the secured position, the mask body covers a mouth and nose area of the user and the adhesive band adheres the eye protection film closely to an upper facial area of the user, so as to seal foreign objects, viruses or bacteria from the user (see column 6 lines 66, 67 and column 7 lines 1-10).

Referring to claim 2, Flynn discloses an apparatus wherein the adhesive band has a predetermined thickness such that the eye protecting film maintains a predetermined distance away from the user (see column 8 lines 15-25).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn US Patent No. 6,543,450 in view of Chung US Patent No. 6,526,975. Referring to claims 3 and 4, Flynn discloses the applicant's invention as claimed with the exception of providing an adhesive band that further comprises a parting covering the user adhesion side when the adhesive band is not in use, the parting is removed when the mask structure is in use. Chung discloses a disposable gas mask that does provide an adhesive band that further comprises a parting covering the user adhesion side when the adhesive band is not in use, the parting is removed when the mask structure is in use (see column 3 lines 35-40 and column 4 lines 25-35). Therefore it would have been obvious to modify Flynn's invention by providing an adhesive band that further comprises a parting covering the user adhesion side when the adhesive band is not in use, the parting is removed when the mask structure is in use in order to protect the face from toxic external environment.

Referring to claim 10, Flynn discloses the applicant's invention as claimed with the exception of providing an eye protecting film that comprises of a plastic material. Chung discloses a disposable gas mask that does provide an eye protecting film that comprises of a plastic material. Therefore it would have been obvious to modify Flynn's invention by providing an eye protecting film that comprises of a plastic material in order to prevent the user from getting hurt and to reduce the manufacturing costs.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn US Patent No. 6,543,450 in view of Chung US Patent No. 6,526,975 as applied to claims 3 and 4 above,

and further in view of Forbes US Patent No. 4,856,535. Flynn and Chung discloses the applicant's invention as claimed with the exception of providing a parting that has a plurality of tear off lines. Forbes discloses a protective face shield that does provide a parting that has a plurality of tear off lines (see column 4 lines 40-45). Therefore it would have been obvious to modify Flynn's invention by providing a parting that has a plurality of tear off lines in order to make it easier to remove the parting cover.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn US Patent No. 6,543,450 in view of Gazzara US Patent No. 5,406,944. Flynn discloses the applicant's invention as claimed with the exception of providing a nose adjustment that is provided on the upper periphery of the mask body. Gazzara discloses a mask with adjustable shield that does provide a nose adjustment that is provided on the upper periphery of the mask body. Therefore it would have been obvious to modify Flynn's invention by providing a nose adjustment that is provided on the upper periphery of the mask body in order to adjust the mask according the face structure of the wearer.

The claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gazzara US Patent No. 5,406,944. Although the invention is not identically disclosed or described as set forth in 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable. Since the applicant has not established any criticality on why the nose area adjusting piece to be made of aluminum, the examiner

comes to a conclusion the material used to make the nose adjusting piece is simply a matter of design choice.

***Allowable Subject Matter***

Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
January 31<sup>st</sup>, 2005

Henry Bennett  
Supervisory Patent Examiner  
Group 3700